MSS

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

WRIT PETITION NO. 4973 OF 2006

PRATAP SHIVAJIRAO JADHAV & ORS... PETITIONERS

Vs.

THE STATE OF MAHARASHTRA & ORS... RESPONDENTS

Mr. S.S. Patwardhan for petitioners

Mrs. S. S. Bhende, AGP for R-1 & 2

Mr. A.M. Kulkarni h/f Mr. A. A. Kumbhakoni for R-3

CORAM: SMT. RANJANA DESAI &
SMT. R. S. DALVI,JJ.

DATE: NOVEMBER 29, 2007.

P.C.

1. The petitioners are the owners of Survey No. 118 situate at Islampur, Taluka Walva, District Sangli. The development plan for Islampura Taluka was sanctioned by respondent 1 i.e. State of Maharashtra through Urban Development Department on 20/1/80. It came into force on 1/4/80. Out of the total land belonging to the petitioners the land admeasuring 40 R was reserved for extension of the school building run by the 4th respondent.

2. The case of the petitioners entirely rests on Section 127 of the Maharashtra Regional Town Planning Act, 1966 ("the said Act" for short). Section 127 of the said Act states that, if any land is reserved, allotted or designated for any purpose specified in any plan under the said Act, is not acquired by agreement within ten years from the date on which a final Regional plan, or final Development plan comes into force or if proceedings for the acquisition of such land under the said Act or under the Land Acquisition Act, 1894, (I of 1894), are not commenced within such period, the owner or any person interested in the land may serve notice on the Planning Authority, Development Authority or as the case may be, Appropriate Authority, to that effect; and if within six months from the date of the service of such notice, the land is not acquired or no steps as aforesaid are commenced for its acquisition, the reservation, allotment or designation shall be deemed to have lapsed, and thereupon the land shall be deemed to be released from such reservation, allotment or designation and shall become available to the owner for the purpose of development as otherwise, permissible in the case of adjacent land under the

relevant plan.

3. According to the petitioners, therefore, if no steps are taken for acquisition of the land within the period specified in Section 127, the reservation lapses. It is the case of the petitioners that on 13/9/04 the petitioners issued a purchase notice as per Section 127 of the said Act. On 3rd December, 2004, the Assistant Director Urban Development department by his letter directed the 4th respondent to start acquisition proceedings. However, no steps were taken by the 4th respondent., By letter dated 8/12/04 the Chief Officer, Municipal Council i.e. the Planning Authority again asked the 4th respondent to start acquisition proceedings and made it clear in that letter that if the acquisition is not started, the reservation will lapse. Despite this letter, no steps were taken for acquiring the said land.

4. Thereafter the 2nd respondent i.e. the Collector of Sangli called for a report. The Chief Officer of Municipal Council submitted a report stating that respondent 4 has not even submitted any proposal for acquisition of the said land.

5. It is the case of the petitioners that thereafter the petitioners called for details to find out whether steps have been taken by respondent 4 for acquiring the said land or not under the Right to Information Act. By letter dated 14/6/06, the 4th respondent informed the petitioners that the 4th respondent proposes to take steps for initiating acquisition proceedings. It is in these circumstances that the petitioners have filed the present petition.

6. We must make a reference to paragraph 3 of the petition where the petitioners have stated that out of the total land admeasuring about 40 R is reserved for extension of the schools run by respondent 4 and the balance land belonging to the petitioners is reserved for the purpose of road widening. It is categorically stated that the petitioners do not want to comment on the said reservation made for the purpose of road widening as it is not the subject matter of this petition. It is therefore, abundantly clear that the present petition concerns itself only with the reservation for extension of the school run by the 4th respondent.

7. Mr. Vijay Mahadev Gangawane, Assistant Director of Town Planning, Sangli has filed affidavit-in-reply. The factual averments made in the petition are not denied in this affidavit. It is stated in the affidavit that respondent 4 has not initiated acquisition proposal in respect of site No. 13 which is reserved for extension of Gurukul Vidyalay within the stipulated period and hence purchase notice issued by the petitioners is applicable to the petitioners' land included in Site No. 13 in the sanctioned development plan. It is clear, therefore, that the 1st respondent is supporting the case of the petitioners that acquisition proceedings are not initiated within the stipulated period. The learned AGP has confirmed this fact.

8. It appears from this affidavit that the petitioners' land is again reserved as site No. 23 for extension of Gurukul Vidyalay in the draft development plan of Islampur. This is done as per Section 46 of the said Act. In our opinion such a course is not permissible in view of the authoritative pronouncement of this court in **Kishor s/o Siddheshwar Wadotkar (Dr.) v. Director of Town Planning & Ors., 2007 (3) M.L.J. 399**. While

dealing with almost similar fact situation this court observed as under:

> "In view of settled legal position, it is evident that right accrued to the petitioner to get the land released from the reservation under Section 127 of the MRTP Act cannot be taken away merely because land in question is again shown to be reserved in the revised development plan. On the other hand, plain reading of provisions of Section 127 of the MRTP Act demonstrate that after lapsing of period of ten years, if the concerned Authority fails to take steps in respect of acquisition of land or does not acquire the land within a period of six months from the date of service of notice as contemplated under Section 127, reservation shall be deemed to have lapsed and land shall be deemed to be released from such reservation. As per the scheme prescribed under Section 127of the MRTP Act, it is implicitly clear that once the period of ten years is lapsed and the Planning Authority has not taken

steps to acquire the land within a period of six months from the date of service of notice, by virtue of deeming fiction, reservation shall be deemed to have been lapsed and land shall be deemed to have been released from such reservation. Similarly, right which is accrued to the owner of the land after lapsing of reservation cannot be taken away by the planning Authority by exercising power under section 38 of the MRTP Act, by again reserving the land for the public purpose in the revised development plan. The issue is answered accordingly.

9. The 4th respondent which is the contesting respondent has been served by court notice. As directed by us the petitioners have served the 4th respondent by advocate’s notice. Affidavit of service has been filed by the 1st petitioner. A letter along with acknowledgement is annexed thereto indicating that the said letter was served on the 4th respondent is annexed to the said affidavit. Despite service, the 4th respondent has not chosen to contest the writ petition. No affidavit in reply is filed.

10. In the aforesaid circumstances, the petition will have to be partly allowed. It is declared that the reservation to the extent of 40 R out of Survey No. 118 situated at Islampur, Taluka Walva, District Sangli has lapsed. The said land is declared to be free from reservation for extension of 4th respondent school under the development plan.

11. Petition is disposed of.

JUDGE

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